Department for
Communities and
Local Government

Sharon Kemp
Chief Executive
Riverside House
Main Street
Rotherham
S60 1AE

18 July 2017

Dear Sharon,

ROTHERHAM METROPOLITAN BOROUGH COUNCIL – PROPOSED FURTHER DIRECTIONS

In her 27 month progress report Mary Ney, Rotherham Lead Commissioner, has recommended the return of additional functions to the Council. I am now writing to invite your Authority, if it wishes, to make representations to the Secretary of State about the revised intervention package he is proposing.

The Secretary of State has carefully considered the reports and other relevant information referred to in the attached Annex. He is satisfied, on the basis of the evidence set out therein, that your Authority is able to exercise functions in relation to performance management, asset management, human resources, waste collection and community safety, in compliance with the requirements of Part 1 of the Local Government Act 1999 ("the 1999 Act"), namely to comply with the best value duty. The package of measures which he is proposing to implement through appropriate Directions is set out in the attached Annex.

Your Authority is now invited to make such representations as it wishes about the report and the Secretary of State's proposals. All such representations should be sent by email to Debjani.Ghosh@communities.gsi.gov.uk, copied to Alex.Powell@communities.gsi.gov.uk, or in hard copy to the address below marked for the attention of Debjani Ghosh, so as to be received on or before 9:30 a.m. on Wednesday 26th July 2017. They will then be carefully considered by the Secretary of State in making a decision as to whether to make any, and if so what, Directions.

I am copying this letter to your Authority's section 151 Officer, to its Monitoring Officer and to the Commissioners' office.

Yours sincerely,

ALEX POWELL
2 Marsham Street
London SW1P 4DF

ANNEX – PROPOSED REVISED INTERVENTION PACKAGE

INTRODUCTION

1. Following the receipt of a 27 month progress report by Mary Ney, Rotherham Lead Commissioner, on the potential return of functions from Commissioners to Rotherham Metropolitan Borough Council ("the Authority"), dated 18 May 2017, as required by the Directions issued to the Authority on 21 March 2017, the Secretary of State for Communities and Local Government ("the Secretary of State") is considering exercising his powers under section 15 of the Local Government Act 1999 ("the 1999 Act") to return certain functions in relation to the service areas identified in the progress report, namely performance management, asset management, human resources, waste collection and community safety ("the proposed 2017 service areas"), to the Authority to exercise.

2. The Secretary of State is also considering issuing further directions under section 15 of the 1999 Act in order to facilitate the return of the proposed 2017 service areas and to ensure the Authority's compliance with the requirements of Part 1 of the 1999 Act.

CONTEXT

3. On 26 February 2015 the Secretary of State for Communities and Local Government and the Secretary of State for Education exercised their respective powers of direction under section 15 of the 1999 Act and section 497A of the Education Act 1996 ("the 1996 Act") in relation to the Authority and issued Directions to the Authority ("the 26 February 2015 Directions"). This followed consideration of the investigation and report by Dame Louise Casey CB dated 27 January 2015 ("the Casey report"), the advice note from Her Majesty's Chief Inspector of Education, Children's Services and Skills (Sir Michael Wilshaw) to the Secretary of State for Education of 30 September 2014, and published on 7 October 2014, ("Sir Michael Wilshaw's advice note") and representations made by the Authority. The Casey report identified failings of the utmost seriousness, and concluded that the Authority was not fit for purpose and in the discharge of its functions was failing to comply with its best value duty. Sir Michael Wilshaw's advice note identified failings such that the Secretary of State for Education was satisfied that the Authority was failing to perform children's social care services to an adequate standard. In light of the Casey report and Sir Michael Wilshaw's advice note, the Secretary of State for Communities and Local Government and Secretary of State for Education issued the 26 February 2015 Directions, which outlined wide-ranging measures to address the identified failings in the Authority.

4. When the then Secretary of State for Communities and Local Government announced the intervention in the House of Commons on 26 February 2015 he

stated that "...the intervention should initially be broad and wide ranging with Commissioners exercising many of the Authority's functions until these can be confidently rolled back for the Authority to exercise in compliance with its best value duty." It is therefore clear that the Secretary of State's intention was that the functions outlined in Annex B to the 26 February 2015 Directions should be exercised by the Commissioners until such time as the Authority is able to exercise functions in compliance with the best value duty, and the Authority and Lead and other Commissioners agree that it would be appropriate for the exercise of a function (or functions) to be returned to the Authority, subject to the provision of reasons and clear evidence to substantiate any such proposal (as set out in paragraph (1) of Annex A to the 26 February 2015 Directions).

5. Between August 2015 and January 2016 the Commissioners made the following reports in relation to the Authority:
    - 26 August 2015: the Lead Commissioner sent to both Secretaries of State a report outlining progress made during the 6 months from February 2015, as required by paragraph 3 of Annex A to the 26 February 2015 Directions.
    - 27 November 2015: the Lead Commissioner sent to both Secretaries of State the 9 month review on the potential return of functions to the Authority ("the 27 November 2015 report"), stating that certain identified service areas and associated executive and non-executive functions could now be exercised in compliance with the requirements of Part 1 of the 1999 Act and so returned to the Authority to exercise. The 27 November 2015 report proposed that the remaining service areas and associated executive and non-executive functions ("the retained service areas") should continue to be exercised by Commissioners.
    - 11 January 2016: further report on each of the identified service areas was provided on 11 January 2016 ("the 11 January 2016 report") plus auxiliary material on 14 January 2016 ("the 14 January 2016 auxiliary material"). The 14 January 2016 auxiliary material proposed minor additions to the identified service areas.

6. After considering the 27 November 2015 report, the 11 January 2016 report and the 14 January 2016 auxiliary material, on 21 January 2016 the Secretary of State sent to the Authority a letter indicating he was considering exercising his powers under section 15 of the 1999 Act in order to return the identified service areas to the Authority ("the 21 January 2016 letter"), and invited the Authority to make representations to him. Representations were received from Cllr Martyn Parker on 30 January 2016 and from Cllr Chris Read and Sharon Kemp on 2 February 2016.

7. After carefully considering afresh the Casey report, Sir Michael Wilshaw's advice note, the 27 November 2015 report, the 11 January 2016 report, the 14 January 2016 auxiliary material and the representations received from the Authority; on 11 February 2016 the Secretary of State issued new Directions to the Authority ("the 11 February 2016 Directions"). The 11 February Directions returned the identified

service areas to the Authority to exercise, but prescribed that the Commissioners should exercise functions in relation to the retained service areas. The identified service areas were returned to the Authority via paragraph 6 of Annex B to the 11 February 2016 Directions, which specified the service areas to be exercised by Commissioners – all other service areas and associated executive and non-executive functions therefore fell by default to be exercised by the Authority. The 11 February 2016 Directions also set out oversight arrangements in relation to the identified service areas to enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with the best value duty without clouding where ultimate responsibility applies.

8. On 10 May 2016 the Lead Commissioner sent to both Secretaries of State the 15 month review on the potential return of functions ("the 10 May 2016 report"), as required by the 11 February 2016 Directions and set out comprehensive evidence to demonstrate how each of the four criteria established by the Lead Commissioner in the 27 November 2015 report were met in relation to the licensing functions. The Lead Commissioner's 18 month review dated 11 August 2016 ("the 11 August 2016 report") provided letters of assurance from Weightmans and Gowling WLG regarding the licensing function. It also included information on the implementation of the new licensing policy and recruitment for the new organisational structure and reiterated that in the event the licensing function was returned to the Council, Commissioner Ney would continue to play an oversight role.

9. After carefully considering the 10 May 2016 and 11 August 2016 reports, on 19 October 2016 the Secretary of State sent to the Authority a letter indicating he was considering exercising his powers under section 15 of the 1999 Act in order to return licensing functions to the Authority ("the 19 October letter"), and invited the Authority to make representations to him. Representations were received from the Rotherham UKIP leader, the Council leader and the Chief Executive.

10. After carefully considering the 10 May 2016 and 11 August 2016 reports, and the representations received from the Authority, on 13 December 2016 the Secretary of State issued further Directions to the Authority ("the 13 December Directions") amending the 11 February 2016 Directions. The 13 December Directions returned licensing functions to the Authority to exercise, but prescribed that the Commissioners should exercise functions in relation to the service areas named in paragraph 5 of Annex B to the 13 December Directions. All other service areas and associated executive and non-executive functions therefore fell by default to be exercised by the Authority. The 13 December Directions also set out oversight arrangements in relation to the service areas already exercised by the Authority to enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with the best value duty without clouding where ultimate responsibility applies.

11. On 10 November 2016, the Lead Commissioner sent to both Secretaries of State the 21 month review on the potential return of functions ("the 10 November 2016 report"), as required by the 13 December Direction and set out evidence supporting his recommendation to return nine functions. Additional information was subsequently provided by Commissioners.

12. After carefully considering the 10 November 2016 report and supporting information, on 9 February 2017 the Secretary of State sent to the Authority a letter indicating he was considering exercising his powers under section 15 of the 1999 Act in order to return six functions to the Authority ("the 9 February letter"), and invited the Authority to make representations to him. Representations were received from the Council leader and the Chief Executive. These representations also supported a recommendation from the Lead Commissioner in his 24 progress month review on the potential return of functions ("the 10 February 2017 report") to return the power to appoint council representatives to external bodies

13. After carefully considering the 10 November 2016 and 10 February 2017 reports, additional information received from Commissioners and the representations received from the Authority, on 21 March 2017 the Secretary of State issued further Directions to the Authority ("the 21 March Directions") amending the 13 December 2016 Directions. The 21 March Directions returned functions relating to adult social care and the Council's partnership with the NHS, external partnerships, economic growth, town centre, audit, ground maintenance as well as the power to appoint council representatives to external bodies to the Authority to exercise. It also prescribed that the Commissioners should exercise functions in relation to the service areas named in paragraph 4 of Annex B to the 21 March Directions. All other service areas and associated executive and non-executive functions therefore fell by default to be exercised by the Authority. The 21 March Directions also set out oversight arrangements in relation to the service areas already exercised by the Authority to enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with the best value duty without clouding where ultimate responsibility applies.

THE LEAD COMMISSIONER'S 18 MAY 2017 REPORT

14. After carefully considering the 18 May 2017 report and additional information subsequently provided by Commissioners, the Secretary of State is considering exercising his powers under section 15 of the 1999 Act in relation to the Authority, in order to ensure that the proposed 2017 service areas are returned to the Authority.

15. The Secretary of State is considering making further directions to facilitate the return of the proposed 2017 service areas to the Authority. The directions would, as with the functions currently managed by the Council, enable the Commissioners

to advise and scrutinise the Authority and ensure its compliance with the best value duty.

FUNCTIONS TO BE RETURNED TO THE AUTHORITY

16. The Secretary of State proposes that the proposed 2017 service areas are returned to the Authority in the third quarter of 2017. The Authority would exercise associated functions, including, for the avoidance of doubt:

    a. The delegation of the exercise of such functions under section 9E of the Local Government Act 2000 (including all 'local choice' functions);
    b. Functions of arranging, under section 101 of the Local Government Act 1972, for the discharge of any of the Authority's functions by another body or person;
    c. All functions of the Authority relating to the nomination or appointment of persons to other bodies.

ACTIONS TO BE TAKEN BY THE AUTHORITY

17. The Authority will be obliged to continue to undertake the actions outlined in paragraphs 1-8 of Annex A to the 21 March Directions for the service areas they currently manage.

18. In order to enable the Commissioners to advise and scrutinise the Authority and ensure its compliance with the best value duty without clouding where ultimate responsibility applies, the Authority will be required to undertake the actions outlined in paragraphs 9-15 of Annex A to the 21 March Directions in relation to all functions exercised by the Authority, including the following of the proposed 2017 service areas:

    - performance management;
    - asset management;
    - human resources;
    - waste collection; and
    - community safety.

19. Community safety, one of the proposed 2017 service areas, will have enhanced oversight arrangements from the Commissioners with respect to one area of service delivery, namely domestic abuse, in that the Council will be required to follow any written recommendations made by the Commissioners in relation to any Cabinet decision regarding this issue, so as to ensure the best value duty is met. This additional safeguard provides further assurance to the public.

20. Currently, Commissioners chair HR appeals panels. The Council's constitution provides for a Member HR appeals panel however the Council is reviewing the constitution with a view to making arrangements for Officers to discharge this function as opposed to Members. It is expected that this will be in place by September 2017 and it is suggested that this aspect of the Direction is implemented at that time.

FUNCTIONS TO BE EXERCISED BY THE COMMISSIONERS

21. The Secretary of State proposes that the Commissioners exercise all functions in relation to the service areas outlined in paragraph 4 of Annex B to the 21 March Directions, minus the proposed 2017 service areas to continue to deliver improvements in those services and outcomes for the people of Rotherham, secure future compliance with the best value duty and restore public trust and confidence in Rotherham. This conclusion has been reached by careful consideration of the 18 May report and additional information provided by the Commissioners.

22. The functions to be exercised by Commissioners would include, for the avoidance of doubt:

    a. All local choice functions;
    b. Functions of arranging for the discharge of functions by another body or person; and
    c. The nomination or appointment of persons to other bodies that relate to the identified functions.

23. Paragraph 2 of Annex B to the 21 March Directions provides that the Commissioners are to exercise non-executive functions in relation to the appointment and dismissal of statutory officers. Commissioners would continue to exercise these functions. Responsibility for determining special responsibility allowances in relation to the identified service areas and associated functions returned to the Authority would also be retained by Commissioners.

THE COMMISSIONER TEAM

24. The Commissioner team would remain unchanged from the arrangements put in place from 1 April 2017.

DURATION OF THE DIRECTION

25. The 21 March Directions are in force until 31 March 2019. This reflects the seriousness of the failings identified in the Casey report and Sir Michael Wilshaw's advice note and the extent of the improvements needed. Any further Directions reflecting the proposals above would also be in force until 31 March 2019.